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INSURANCE COMPANY

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

SCOTTSDALE INSURANCE
COMPANY, an Ohio corporation,

Plaintiff,

v.

REPAIRPAL, INC., a Delaware
corporation,

and

AUBREY JACKSON SHELTON II, a
California citizen,

Defendants.

Case No.:3:25-cv-5094

**SCOTTSDALE INSURANCE
COMPANY’S COMPLAINT**

[JURY TRIAL DEMANDED]

For its Complaint against Defendants RepairPal, Inc. (“RepairPal”) and Aubrey Jackson Shelton II (“Shelton”), Plaintiff Scottsdale Insurance Company (“Scottsdale”) states as follows:

1. This is an insurance coverage action seeking declaratory relief pursuant to 28 U.S.C. §§ 2201, 2202, and 1332 and for breach of contract.

PARTIES

2. Scottsdale is a corporation organized and existing under the laws of the State of Ohio with its principal place of business located in Scottsdale, Arizona.

3. RepairPal is a corporation organized and existing under the laws of the State of Delaware with its principal place of business located in San Francisco, California.

1 4. Shelton was a senior accountant at RepairPal and is a citizen of the State
2 of California.

3 **JURISDICTION AND VENUE**

4 5. The Court has jurisdiction over this action pursuant to 28 U.S.C. §
5 1332(a)(1). There is complete diversity of citizenship between Scottsdale, on the one
6 hand, and RepairPal and Shelton, on the other hand, and the amount in controversy
7 exceeds \$75,000 exclusive of interest and costs.

8 6. Venue is proper in this district pursuant to 28 U.S.C. §§ 1391(b)(1) and
9 (2) because Shelton resides in San Francisco and RepairPal is headquartered in San
10 Francisco, and a substantial part of the events or omissions giving rise to the claim
11 occurred in this district.

12 **FACTUAL ALLEGATIONS**

13 **The Policy**

14 7. Scottsdale issued Business and Management Indemnity Policy No.
15 EKS3468389 to RepairPal (the “Policy”) effective for the period from March 1, 2023
16 to March 1, 2024 (the “Policy Period”). A copy of the Policy is attached hereto as
17 “Exhibit 1.”

18 8. Subject to the Policy’s terms, conditions, limitations, exclusions, and
19 endorsements, the Policy provides coverage under an Employment Practices
20 Coverage Section and a Directors and Officers and Company (“D&O”) Coverage
21 Section. (Ex. 1 at Declarations, Item 3.)

22 9. Insuring Clause A(1) of the D&O Coverage Section states that
23 Scottsdale shall pay the “Loss” of the “Directors and Officers” for which the
24 “Directors and Officers” are not indemnified by RepairPal and which the “Directors
25 and Officers” have become legally obligated to pay by reason of a “Claim” first made
26 against the “Directors and Officers” during the Policy Period or, if elected, the
27 Extended Period and reported to Scottsdale pursuant to Section E(1) of the Policy, for
28

1 a “Wrongful Act” taking place prior to the end of the Policy Period. (Ex. 1 at D&O
2 Coverage Section § A(1).)

3 10. Insuring Clause A(2) of the D&O Coverage Section states that
4 Scottsdale shall pay the “Loss” of the “Company” for which the “Company” has
5 indemnified the “Directors and Officers” and which the “Directors and Officers” have
6 become legally obligated to pay by reason of a “Claim” first made against the
7 “Directors and Officers” during the Policy Period or, if elected, the Extended Period
8 and reported to Scottsdale pursuant to Section E(1) of the Policy, for a “Wrongful
9 Act” taking place prior to the end of the Policy Period. (Ex. 1 at D&O Coverage
10 Section § A(2).)

11 11. “Directors and Officers” is defined in the D&O Coverage Section, in
12 relevant part, as any person who was, now is, or shall become a duly elected or
13 appointed director, officer, or similar executive of the Company, or a full-time or
14 part-time employee of RepairPal. (Ex. 1 at D&O Coverage Section § B(4), as
15 amended by Endorsements No. 25, 32, 40.)

16 12. “Claim” is defined in the D&O Coverage Section, in pertinent part, as “a
17 criminal proceeding against any ‘Insured’ commenced by a return of an indictment or
18 similar document, or receipt of filing of a notice of charges,” among other things.
19 (Ex. 1 at D&O Coverage Section §§ B(1)(d), as amended by Endorsements No. 4, 30,
20 34.)

21 13. “Insured” is defined as the “Company” (i.e., RepairPal) and the
22 Directors and Officers. (Ex. 1 at D&O Coverage Section § B(5); General Terms &
23 Conditions § B(2); Declarations, Item 1.)

24 14. “Loss” is defined in the D&O Coverage Section, in relevant part, as
25 damages, judgments, settlements, pre-judgment or post-judgment interest awarded by
26 a court, and “Costs, Charges and Expenses” incurred by Directors and Officers under
27 Insuring Clause 1, with several exceptions. (Ex. 1 at D&O Coverage Section § B(7),
28 as amended by Endorsement No. 7.)

1 15. “Wrongful Act” is defined in the D&O Coverage Section, in relevant
2 part, as:

3 any actual or alleged error, omission, misleading statement,
4 misstatement, neglect, breach of duty or act allegedly committed or
5 attempted by:

6 a. any of the Directors and Officers, while acting in their capacity as
7 such, or any matter claimed against any Director and Officer solely
8 by reason of his or her serving in such capacity;

9 b. any of the Directors and Officers, while acting in their capacity as
10 a director, officer, trustee, governor, executive director or similar
11 position of any ‘Outside Entity’ where such service is with the
knowledge and consent of [RepairPal]

12 (Ex. 1 at D&O Coverage Section § B(9).)

13 16. “Costs, Charges and Expenses” is defined in the D&O Coverage
14 Section, in pertinent part, as “reasonable and necessary legal costs, charges, fees and
15 expenses incurred by any of the Insureds in defending Claims” (Ex. 1 at D&O
16 Coverage Section § B(3)(a), as amended by Endorsement No. 34.)

17 17. The Policy states that it shall be the duty of Scottsdale and not the duty
18 of the Insureds to defend any Claim. (Ex. 1 at D&O Coverage Section § F(1).)

19 18. The Policy states: “The Insureds agree not to settle or offer to settle any
20 Claim, incur any Costs, Charges and Expenses or otherwise assume any contractual
21 obligation to admit any liability with respect to any Claim without the prior written
22 consent of [Scottsdale], such consent not to be unreasonably withheld. [Scottsdale]
23 shall not be liable for any settlement, Costs, Charges and Expenses, assumed
24 obligation or admission to which it has not consented” (the “Consent Provision”).
25 (Ex. 1 at D&O Coverage Section § F(3).)

26 **The Underlying Action**

27 19. On or about August 15, 2023, the United States of America filed an
28 Indictment against Shelton, No. 3:23-cr-00258-JSC, in the United States District

1 Court for the Northern District of California (the “Underlying Action”). A copy of the
2 Underlying Action is attached hereto as “Exhibit 2.”

3 20. In the Underlying Action, the Government alleged that Shelton engaged
4 in a scheme to defraud RepairPal by diverting money in RepairPal’s bank accounts
5 for his own personal use. (Ex. 2 ¶¶ 6-7.)

6 21. The Government asserted that Shelton inflated his salary and bonus by
7 representing that he was entitled to receive “executive loans” and “reimbursements”
8 that he did not actually incur, provided false payroll documentation in furtherance of
9 the scheme, and failed to disclose to RepairPal that he had improperly transferred
10 money from RepairPal’s bank accounts to his personal accounts. (*Id.* ¶ 7.)

11 22. The Government asserted the following causes of action against Shelton:
12 (1) bank fraud in violation of 18 U.S.C. § 1344(a); (2) wire fraud in violation of 18
13 U.S.C. § 1343; (3) tax evasion in violation of 26 U.S.C. § 7201; (4) aiding and
14 abetting in violation of 18 U.S.C. § 2; and (5) forfeiture in violation of 18 U.S.C. §
15 982(a)(2). (*Id.* at 1.)

16 **Scottsdale’s Coverage Position**

17 23. After the Underlying Action was tendered to Scottsdale for coverage
18 under the Policy, on or about October 2, 2023, counsel for Scottsdale sent a letter to
19 counsel for Shelton indicating that Scottsdale would provide a defense to Shelton in
20 connection with the Claim pursuant to its right and duty to do so under the Policy. A
21 copy of the October 2, 2023 letter is attached hereto as “Exhibit 3.”

22 24. Pursuant to Scottsdale’s right and duty to defend under the Policy,
23 Scottsdale appointed Theresa Kristovich of the law firm of Kabat Chapman & Ozmer
24 to defend Shelton with respect to the allegations asserted against him in the Underlying
25 Action. (Ex. 3 at 5.)

26 25. On or about October 6, 2023, counsel for Shelton sent a letter to counsel
27 for Scottsdale disputing Scottsdale’s entitlement to appoint counsel to defend Shelton
28

1 in the Underlying Action. A copy of the October 6, 2023 letter is attached hereto as
2 “Exhibit 4.”

3 26. In the October 6, 2023 letter, counsel for Shelton stated: “Mr. Shelton
4 requests that Scottsdale accept his appointment of Paul Hastings as counsel and cover
5 Paul Hastings’ fees as they defend him in the criminal case.” (Ex. 4 at 3.)

6 27. On or about October 13, 2023, counsel for Scottsdale sent a letter to
7 counsel for Shelton again stating that it was appointing Theresa Kristovich of Kabat
8 Chapman & Ozmer to defend Shelton pursuant to Scottsdale’s right and duty to do so
9 under the Policy. A copy of the October 13, 2023 letter is attached hereto as “Exhibit
10 5.”

11 28. Scottsdale has never consented, in writing or otherwise, to Shelton
12 incurring any Costs, Charge and Expenses by any law firm or company other than
13 Kabat Chapman & Ozmer in connection with the Underlying Action.

14 29. Shelton has refused to use Theresa Kristovich of Kabat Chapman &
15 Ozmer to defend him in the Underlying Action.

16 30. Shelton retained Paul Hastings LLP to represent him in connection with
17 the Underlying Action without Scottsdale’s consent.

18 31. Upon information and belief, Paul Hastings LLP incurred fees and
19 expenses in connection with its representation of Shelton in the Underlying Action.

20 32. On or about February 29, 2024, Shelton filed a lawsuit against
21 RepairPal, No. 2024-0197, in the Court of Chancery of the State of Delaware alleging
22 that RepairPal failed to advance to Shelton the fees and expenses that he allegedly
23 incurred in defense of the Underlying Action in violation of the RepairPal Bylaws
24 and a February 24, 2020 Indemnification Agreement entered into between RepairPal
25 and Shelton (the “Advancement Action”).

26 33. On or about June 3, 2024, the court in the Advancement Action entered
27 an Order directing RepairPal to pay two-thirds of the fees and expenses that Shelton
28 allegedly incurred in defense of the Underlying Action.

1 34. On or about May 28, 2025, Scottsdale was informed that RepairPal
2 believes that Scottsdale should reimburse it for the fees and expenses that it has been
3 ordered to pay that were allegedly incurred by Paul Hastings, LLP on behalf of
4 Shelton in defense of the Underlying Action.

5 **COUNT I – DECLARATORY JUDGMENT AS TO CONSENT PROVISION**

6 35. Scottsdale hereby adopts by reference the allegations contained in
7 paragraphs 1 through 34 of this Complaint as if fully set forth herein.

8 36. An actual, present, and justiciable controversy exists concerning whether
9 Shelton violated the Consent Provision by failing to obtain Scottsdale’s consent to
10 Paul Hastings, LLP incurring fees and expenses in connection with the Underlying
11 Action.

12 37. Scottsdale requests that the Court declare that there is no coverage under
13 the Policy for any fees or expenses incurred by Paul Hastings, LLP (or any other law
14 firm or company to which Scottsdale did not consent) in connection with Shelton’s
15 defense in the Underlying Action and, as a result, Scottsdale is not obligated to
16 reimburse Shelton or RepairPal for any such fees and expenses.

17 **COUNT II – BREACH OF CONTRACT**

18 38. Scottsdale hereby adopts by reference the allegations contained in
19 paragraphs 1 through 37 of this Complaint as if fully set forth herein.

20 39. The Policy constitutes a valid and enforceable contract between
21 Scottsdale and Defendants.

22 40. Scottsdale has performed all of its obligations under the Policy with
23 respect to the Underlying Action.

24 41. Defendants breached the Policy by failing to obtain Scottsdale’s consent
25 to use Paul Hastings, LLP to defend Shelton in the Underlying Action.

26 42. Defendants’ breach of the Policy was material and, therefore, excused
27 any obligation on the part of Scottsdale to provide coverage under the Policy for any
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1 fees or expenses incurred by Paul Hastings, LLP in connection with the Underlying
2 Action.

3 43. Defendants' breach of the Policy was a substantial factor in causing
4 Scottsdale's damages.

5 **PRAYER FOR RELIEF**

6 WHEREFORE, Scottsdale prays that this Court enter an Order:

7 1. declaring that there is no coverage under the Policy for any fees or
8 expenses incurred by Paul Hastings, LLP (or any other law firm or company to which
9 Scottsdale did not consent) in connection with Shelton's defense in the Underlying
10 Action and, as a result, Scottsdale is not obligated to reimburse Shelton or RepairPal
11 for any such fees and expenses;

12 2. finding that Defendants' breach of the Policy was material and,
13 therefore, excused any obligation on the part of Scottsdale to provide coverage to
14 Shelton for any fees or expenses incurred by Paul Hastings, LLP in connection with
15 the Underlying Action;

16 3. awarding Scottsdale its costs, expenses, and attorneys' fees; and

17 4. awarding Scottsdale all other relief that the Court deems just and
18 equitable.

19 5. Jury trial demanded.

20
21 DATED: June 16, 2025

COZEN O'CONNOR

22 By: /s/ Valerie Rojas

23 Valerie Rojas

24 Attorneys for Plaintiff SCOTTSDALE

25 INSURANCE COMPANY
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